APPLICATION/REQUÊTE N° 18954/91

Mehmet Mehdi ZANA v/TURKEY

Mehmet Mehdi ZANA c/TURQUIE

DECISION of 21 October 1993 on the admissibility of the application

DECISION du 21 octobre 1993 sur la recevabilité de la requête

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Article 6, paragraph 1 of the Convention

a) Did a detained applicant not permitted to appear before the trial court (Turkey) but heard by another court and represented by a lawyer, receive a fair trial? (Complaint declared admissible)

b) Reasonable time (criminal) Relevant factors complexity of the case, the manner in which the proceedings were conducted by the judicial authorities applicant's conduct In this case, proceedings lasting almost four years (Complaint declared admissible)

Article 6, paragraph 3 (e) of the Convention *A member of a linguistic minority may not claim that he is entitled to use his own language before courts using the language of the majority In this case, no infringement of this provision, as the applicant understood the language used at the hearing*

Article 10, paragraph 1 of the Convention *Does a conviction for defending in the press crimes committed by an armed group infringe freedom of expression? (Complaint declared admissible)*

(TRANSLATION)

THE FACTS

The applicant, a Turkish national born in 1940, lives in Diyarbakır. Before the Commission he is represented by Mr Mustafa Sezgin Tanrıkulu, a lawyer practising in Diyarbakır.

The facts, as submitted by the parties, may be summarised as follows.

In August 1987, when he was detained at the military prison of the 7th Army Corps in Diyarbakır (serving several prison sentences passed previously) and sharing a dormitory cell with convicted members of the PKK (Kurdistan Workers' Party Marxist Leninist), the applicant, in an interview with some journalists who had come to visit the prison, made the following statement:

> I support the PKK's national liberation movement. On the other hand, I am not in favour of massacres. Anybody can make a mistake, and it is by mistake that the PKK kills women and children.

This interview with the journalists was published in the daily newspaper Cumhuriyet of 30 August 1987.

On the same day, the Press Offences department of the Istanbul public prosecutor's office opened a preliminary inquiry relating to the applicant, among others, on suspicion of defending in public an act regarded as a criminal offence, an offence provided for in Article 312 of the Criminal Code. In an order dated 28 September 1987 the Istanbul public prosecutor's office discontinued proceedings against the journalists and ruled that it did not have territorial jurisdiction to deal with the applicant. It referred the case file to the Diyarbakır public prosecutor who, in an order made on 22 October 1987 considering that the charges against the applicant were covered by Article 142 paras. 3 to 6 of the Turkish Criminal Code (under which it is

a criminal offence to spread racist propaganda or propaganda aimed at weakening the sense of nationhood), ruled that he lacked jurisdiction and sent the case-file to the public prosecutor attached to the Diyarbakır State Security Court.

On 4 November 1987 the latter ruled that he lacked jurisdiction, which was vested in the Diyarbakır military prosecutor's office, given that when the applicant made the above statement he was detained in a military prison and thus, according to the law, had military status.

In a bill of indictment filed on 19 November 1987 the Diyarbakır military prosecutor's office brought criminal proceedings against the applicant, among others, under Article 312 of the Criminal Code. The applicant was charged with supporting the activities of an armed group, the PKK, whose actions were aimed at the break-up of Turkish national territory.

On 15 December 1987, at a hearing in the Diyarbakır Military Court, the applicant argued that the court did not have jurisdiction and refused to answer the charges

At a hearing on 1 March 1988 the applicant's lawyer asked the military court to rule that it lacked jurisdiction, given that the offence his client stood accused of was not a military offence and that a military prison could not be considered military premises. On the same day the court rejected this application.

On 28 July 1988 the applicant was transferred from the Diyarbakır military prison to the Eskişehir civil prison

Acting on a request for judicial assistance from the Diyarbakır Military Court, the Eskişehir Air Force Court asked the applicant to submit his defence The applicant, who was on hunger strike in prison, did not appear at a hearing on 2 November 1988. He appeared at a hearing on 7 December 1988 but refused to address the court, considering that it did not have jurisdiction.

In a decision of 18 April 1989 the Diyarbakır Military Court ruled that it lacked jurisdiction over the case and referred the file to the Diyarbakır State Security Court

On 2 August 1989 the applicant was transferred to the Aydın special civil prison.

At the trial, on 20 June 1990, in the Aydın Assize Court, which was acting on a request for judicial assistance from the Diyarbakır State Security Court, the applicant refused to speak in Turkish and stated in Kurdish that he wished to defend himself in his native language. The court informed him that if he persisted in refusing to defend himself he would be considered to have waived his right to do so. As the applicant continued to speak in Kurdish, the court had an entry placed in the record to the effect that he had not defended himself.

In a judgment of 26 March 1991 the Diyarbakır State Security Court sentenced the applicant to twelve months' imprisonment (one-fifth of which was to be served in detention and four fifths on parole, in accordance with the Law of 12 April 1991) for defending in public an act constituting a serious criminal offence and for inciting hatred between different social groups, thus creating discrimination based on connection with a particular social class, race, religion or region

The court held that the PKK was an 'armed group', as defined in Article 168 of the Criminal Code, that it aimed at the secession of a part of Turkish territory and that it committed acts of violence such as murder, kidnapping and armed robbery. It considered that the applicant's statement to the journalists, the content of which had been established as a result of the investigation, constituted the offence defined in Article 312 of the Criminal Code.

On 3 April 1991 the applicant appealed on points of law. The Court of Cassation, in a judgment of 19 June 1991, served on the applicant's lawyer on 18 July 1991, upheld the judgment at first instance. This judgment made the applicant's conviction and sentence final.

The Diyarbakır public prosecutor directed the applicant to report to Diyarbakır prison on 26 February 1992 to serve his sentence, i.e. one fifth of the term of imprisonment (two months and twelve days) and the remainder on parole.

COMPLAINTS

1. The applicant complains in the first place, under Articles 9 and 10 of the Convention, of interference with his freedom of thought and expression, in that he was convicted of a criminal offence on account of what he said in an interview with some journalists.

2. The applicant further complains that he did not have a fair trial, contrary to Article 6 para. 1 of the Convention, as he was not permitted to defend himself in the court called upon to determine the criminal charges against him, namely the Diyarbakır State Security Court.

3. The applicant also complains that his case was not heard within a reasonable time, within the meaning of Article 6 para. 1 of the Convention, in that nearly four years elapsed between the commission of the offence, on 30 August 1987, and the date of the final decision, 19 June 1991.

He asserts in particular that the military court did not rule that it lacked jurisdiction until 18 April 1989, i.e. one year one month and eighteen days after his lawyer had argued, on 1 March 1988, that it lacked jurisdiction *ratione personae*.

4. Lastly, the applicant complains that he was denied the right to conduct his defence in his native language and that the court did not appoint a translator. In that connection he relies on Article 6 paras. 3 (a) and (e) of the Convention.

THE LAW

1 The applicant complains in the first place of interference with his freedom of thought and expression, in breach of Articles 9 and 10 of the Convention, in that he was convicted of a criminal offence on account of what he said in an interview with some journalists

Thus formulated, the applicant's complaint is in fact directed against an alleged infringement of his freedom of expression The Commission will examine this complaint under Article 10 of the Convention, which provides as follows

> "1 Everyone has the right to freedom of expression This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers
>
> 2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary "

The respondent Government assert that the remarks made by the applicant during an interview with the correspondent of an important Turkish daily newspaper amount to an apology for and approval of the acts of violence committed by the PKK, which constituted serious criminal offences under Articles 125 and 168 of the Turkish Criminal Code The applicant's remarks themselves constituted the criminal offence defined in Article 247 of the Code

The Government further maintain that the applicant's conviction on this charge was perfectly justified under the second paragraph of Article 10 of the Convention, for reasons of national security, territorial integrity, public safety, etc The Government maintain that the PKK is an armed organisation which, in order to instil insecurity and fear in the population, carries out armed attacks not only on members of the security forces, judges and public servants, but also on the civilian population, including women, children and old men

In that connection the Government submit copies of judgments delivered by Turkish criminal courts establishing, *inter alia*, the murder by the PKK of sixteen people (three women, nine children and four men) in a Turkish village on 8 July 1987 and the murder of twenty-five people (five women, four babies, eleven children and five men) in the same village on 18 August 1987

The Government assert that the PKK kidnaps men, extracts ransoms, breaks into houses and engages in extortion and pillage of property and agricultural produce In order to disrupt the smooth operation of public services it attacks public service vehicles and buildings and disrupts education by attacking teachers By setting fire to schools it impedes health programmes such as vaccination campaigns It also obstructs work and trade by forcing firms and shops to close Those who do not comply with the PKK's orders are simply executed or assaulted

The applicant observes that he was convicted of an offence for expressing his point of view He maintains that the provisions of the Criminal Code making it an offence to defend in public acts regarded as a criminal offence have created the crime of 'holding the wrong opinion" He submits that in referring to the activities of the PKK the Government are distracting attention from the main issue

The Commission has conducted a preliminary examination of the parties' arguments It considers that this part of the application raises complex factual and legal issues which cannot be resolved at this stage of the examination of the application, but require an examination of the merits Consequently, this complaint cannot be declared manifestly ill-founded within the meaning of Article 27 para 2 of the Convention The Commission further notes that it is not inadmissible on any other grounds

2 The applicant further complains that he did not have a fair trial in the State Security Court, in that he did not appear before that court and was accordingly unable to defend himself He relies on Article 6 para 1 of the Convention, which provides as follows

> In the determination of any criminal charge against him, everyone is entitled to a fair hearing within a reasonable time by [a] tribunal

The respondent Government submit that while the criminal proceedings in issue were pending in the Diyarbakir State Security Court the applicant was serving a sentence of imprisonment passed against him after separate criminal proceedings The applicant's defence submissions were therefore taken down on commission, in accordance with a request for judicial assistance from the State Security Court, by another court of the same rank, at a public hearing The Government point out that the applicant was defended by three lawyers in the Diyarbakir State Security Court

The applicant maintains that he was transferred from Diyarbakir prison first to Eskişehir prison and then to Aydin prison against his will while the criminal proceedings in issue were pending He submits that he manifested his wish to be tried in Diyarbakir by refusing to submit a defence at Eskişehir He observes that the judges who convicted him never laid eyes on him

The Commission has conducted a preliminary examination of the parties' arguments It considers that this part of the application raises complex factual and legal issues which cannot be resolved at this stage of the examination of the application, but

require an examination of the merits. Consequently, this complaint cannot be declared manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention The Commission further notes that it is not inadmissible on any other grounds

3. The applicant also complains of the length of the proceedings, alleging a violation of Article 6 para. 1 of the Convention

The respondent Government admit that consideration of the problems regarding the jurisdiction of the various courts, caused by the fact that the applicant's statement had been made on military premises in Diyarbakir, but had been made public in Istanbul, took some time On the other hand, they observe that after the military court's ruling that it lacked jurisdiction the final judgment, that of the Court of Cassation, was given by the criminal courts two years and two months later

Moreover, the Government maintain that attempts to trace a fugitive co-defendant and the applicant's refusal to conduct his defence in Turkish contributed to the prolongation of the proceedings

The applicant maintains that the judicial authorities were responsible for the fact that the length of the proceedings exceeded a reasonable time. He observes in particular that after the public prosecutor attached to the State Security Court in Diyarbakir had ruled that he lacked jurisdiction on 4 November 1987 the Diyarbakir Military Court considered the case for nearly eighteen months before in its turn relinquishing jurisdiction on 18 April 1989 in favour of the State Security Court.

The Commission refers to the criteria established by the case-law of the Convention institutions for assessing whether in any particular case the proceedings have been conducted within a reasonable time, namely the complexity of the case, the conduct of the applicant and that of the judicial authorities (see, among other authorities, Eur. Court H.R , Eckle judgment of 15 July 1982, Series A no. 51, p. 35, para 80; Eur Court H R , Baggetta judgment of 25 June 1987, Series A no 119, p. 32, para 21)

The Commission has conducted a preliminary examination of the parties' arguments and considers that this part of the application raises issues which cannot be resolved at this stage of the examination of the application, but require an examination of the merits. Consequently, this complaint cannot be declared manifestly ill founded within the meaning of Article 27 para. 2 of the Convention The Commission further notes that it is not inadmissible on any other grounds

4. Lastly, the applicant complains that he was prevented from conducting his defence in the criminal courts in his native language, Kurdish In that connection he relies on Article 6 paras. 3 (a) and (c) of the Convention, which read as follows.

> "3. Everyone charged with a criminal offence has the following minimum rights

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him,

( )

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court '

The Commission observes in this connection that the Convention provisions relied on by the applicant protect persons charged with an offence who do not understand the language used in the criminal proceedings It further points out that, according to the established case-law of the Convention institutions, a member of a linguistic minority may not complain that he is not entitled to use his own language before courts in which the language used is that of the majority (see, among other authorities, No 808/60, Isop v Austria, Dec 8 3 62, Yearbook 5 p 108, Eur Court H R , Luedicke, Belkacem and Koç judgment of 28 November 1978, Series A no 29, p 20, para 48, Brozicek judgment of 19 December 1989, Series A no 167, p 18, para 41)

The Commission notes that in this case the applicant does not claim to be unable to speak Turkish It notes that at the hearing in the Aydin Assize Court, which was acting on a request for judicial assistance made by the Diyarbakir State Security Court, the applicant refused to speak in Turkish because he wanted to conduct his defence in his native language, Kurdish The Commission also takes into account the fact that the applicant had previously exercised public office as the mayor of Diyarbakir, which presupposes a good knowledge of Turkish

Consequently, the Commission considers that this part of the application must be rejected as being manifestly ill-founded, within the meaning of Article 27 para 2 of the Convention

For these reasons, the Commission, by a majority,

DECLARES INADMISSIBLE the complaint concerning the applicant's right to defend himself in his native language, and

DECLARES THE REMAINDER OF THE APPLICATION ADMISSIBLE, without prejudging the merits of the case